OCT 31 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1942.

No. 340.

DOEHLER METAL FURNITURE CO., INC.,
Petitioner,

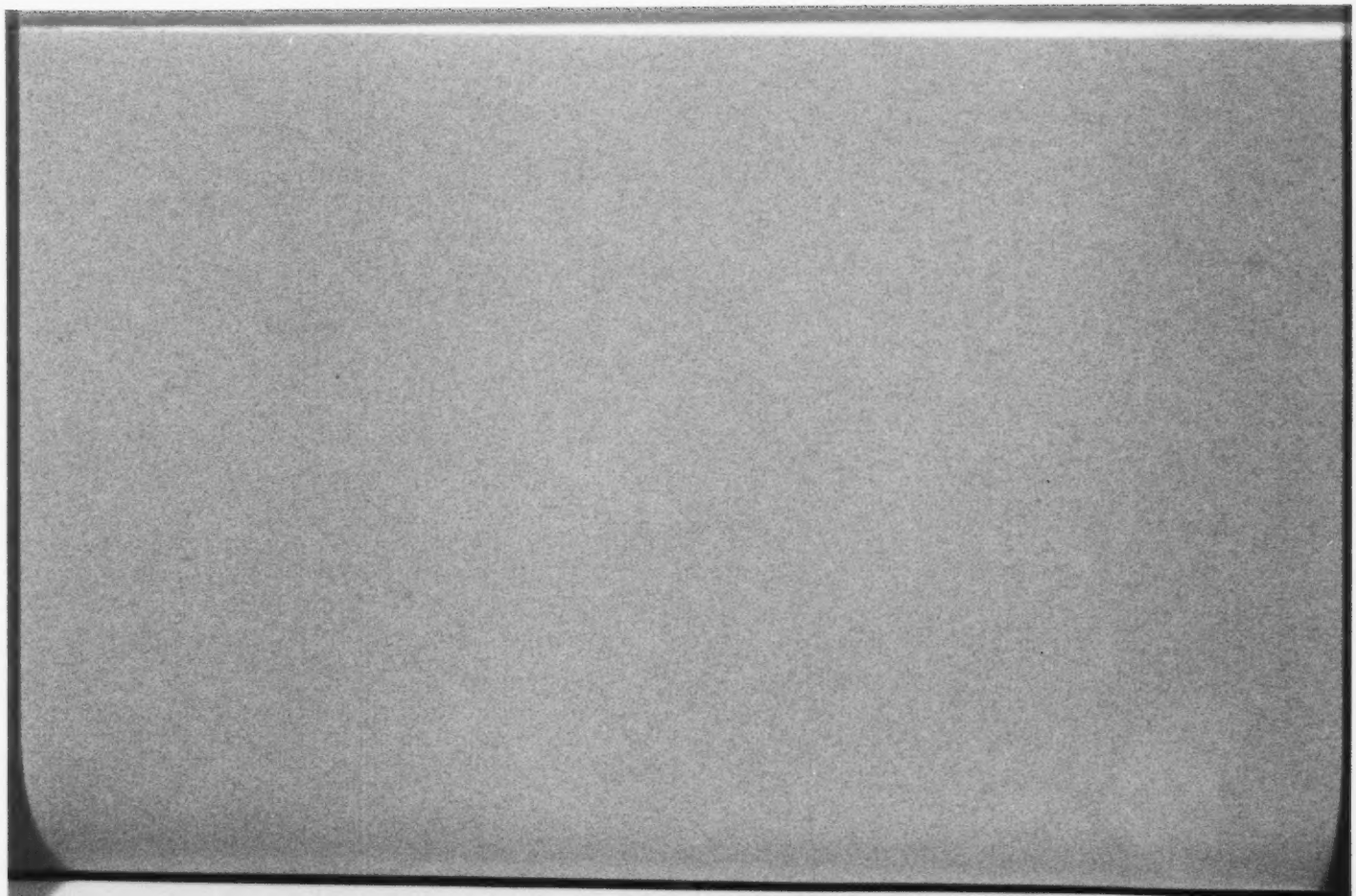
v.

LINDSAY C. WARREN, Comptroller General
of the United States,
Respondent.

PETITION FOR REHEARING.

NATHAN BOONE WILLIAMS,
1010 Vermont Avenue,
Washington, D. C.,
Counsel for Petitioner.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.
CHARLES W. WARDEN, WASHINGTON REPRESENTATIVE,
TOWER BUILDING



IN THE

Supreme Court of the United States

October Term, 1942.

No. 340.

DOEHLER METAL FURNITURE CO., INC.,
Petitioner,

v.

LINDSAY C. WARREN, Comptroller General
of the United States,
Respondent.

PETITION FOR REHEARING.

Comes now counsel for the Petitioner and moves the Court for a rehearing as to the action of the Court in denying the petition for a writ of certiorari as in this cause prayed, and, for cause shows:

Public Importance.

The issues bound up in this record go to the foundation of our American political and judicial system. They embrace the questions for which a global war now engages our thought, consumes our substance, and, takes our lives. Such are now here presented for the first time. They are vital. They are fundamental.

It is of slight pecuniary interest to Petitioner, a corporation, and, whose officers are charged with the trust of conserving and protecting its property rights, as to whether it may have such rights determined by the courts under the provisions of the Declaratory Judgment Act, or whether they are determined in other proceedings authorized by law.

However, it is of the highest public importance to have the reasoned decision of this Court upon the questions presented by this record.

In effect, the denial of the petition for a writ of certiorari in this cause gives affirmative approval and effect to certain conclusions.

Among such conclusions are:

1. That the government of the United States may lawfully enrich itself by means of charges for alleged expenditures never made, and, collect such charges from the citizen dealing with it.
2. That the acts of the Comptroller General in determining applicable principles of law in the statement and settlement of accounts and claims with and against the United States may not be challenged or reviewed by any court, save incidentally and collaterally by suit against the United States itself.
3. That it is not permissible to challenge and have review by the courts of the legality of acts of the Comptroller General of the United States by the means and use of the Declaratory Judgment Act.
4. That despite the use of this Act by the government of the United States to "declare rights and other legal relations" as between itself and citizens, such law and procedure may not be used by the citizen to question the legality of the acts of governmental officials,

particularly, the acts of the Comptroller General of the United States.

5. That the usefulness of declaratory procedure for "the cheapening, expediting, and simplfying of the judicial process itself" is by the action of the Court herein greatly restricted.

There are no facts in issue. All facts are admittedly true as alleged by Petitioner; accepted by the pleadings of Respondent, and, abundantly verified by the brief of Respondent, Comptroller General, as presented by the Solicitor General of the United States.

The Respondent, Comptroller General, by his statement of account as between the government and this Petitioner, allowed a credit of more than $1,000.00 in direct contradiction of his asserted claim of a deficiency of more than $9,000.00, whereby his office admits the correctness of the rule of law as claimed by this Petitioner. *(Exhibit A to complaint of Petitioner, and the Appendix to brief of Solicitor General.)*

To permit the application of any other than this just and lawful rule in the statement of account in question can result but in unjust enrichment to the government of the United States by means of charges for alleged expenditures never made. Such unjust enrichment may be no more lawfully permitted in the determination of the rights and legal relations of the citizen on the one hand and the acts of the Comptroller General on the other with respect to such matters with which he has certain lawful duties, than in cases where individual citizens have controversies with each other.

Mr. Justice Douglas is quoted as saying:

"I'm the kind of conservative who can't get away from the idea that simple honesty ought to prevail in the

financial world." *(Saturday Evening Post, October 17, 1942.)*

Counsel contends for "simple honesty" in the relations of government with the citizen; for intellectual integrity in the interpretation and application of the laws of the land, and, for continuing improvement in the administration of justice.

"Justice" wrote Alexander Hamilton in the *Federalist*, "is the end of government. It is the end of civil socity. It ever has been, and ever will be pursued until it is obtained, or until liberty be lost in the pursuit."

This Court, we respectfully submit, has said to this Petitioner, and, to all the thousands, who under war conditions must of necessity deal with the government of the United States, that the Comptroller General will apply his own conceptions of law to their contracts with the government, and, that however erroneous such legal concepts and principles may be believed to be, there is no way to challenge them save by suit in the Court of Claims, or, as to certain small claims by suit in District Courts.

The Comptroller General of the United States is a powerful and distinguished official. However, he is more of an institution than an official. The acts of his office while legally his responsibility are, quite frequently, the concepts of hundreds of assistants, some learned in the law, and some not so clearly imbued with accurate concepts of justice as might be desired.

That occasionally the vagaries of the office of Comptroller General are such as to bring forth caustic comment is regrettably true. Witness the following from the Court of Claims concerning a matter involving $200.65:

> "If this obligation were a large one it would be bad enough. But when it is for an amount so small that

> the value of the time and expense of litigation will eat up its substance, it is indefensible. That a just government, or any responsible official thereof, would pursue a course that would make such action necessary is almost incredible. It is one of those strange things that sometimes appear in the processes of free government." *(Ct. Claims, Belcher, Ex. v. United States, decided June 2, 1941.)*

A basic question here presented is whether such official may exercise a function of the judiciary, and, determine matters of law without review or question save by the antiquated procedure of direct suit against the government of the United States. To require such procedure in a clear case of admitted facts, as here, is to forego a vital function of the judiciary.

Although the Rules of Civil Procedure as promulgated by this Court abolish the writ of mandamus, (Rule 81,(b)), such is the only suggested remedy available for review of the acts of the Comptroller General according to the opinion of the United States Court of Appeals for the District of Columbia as announced in this action. (R. pp. 10-13.) The Solicitor General insists in his brief that we must sue direct either in the District Court or in the Court of Claims.

We prefer to yet believe that this Court on further reflection will grant the writ for which prayer is made, and, thereby encourage the development of improved judicial processes.

The affirmative action of Congress in amending the Declaratory Judgment Act in 1935 by inserting the restrictive words "except with respect to Federal taxes", effectively disposes of any lingering doubts that Congress did not recognize that one of the important uses of this law was the opportunity its provisions afforded the citizen

to speedily and at slight expense question the acts of public officials by appeal to the courts whenever such acts invaded the legitimate province of the judiciary.

This Court has now under review an action brought under the provisions of the Declaratory Judgment Act against the Secretary of Agriculture and others for an appropriate declaration of law. *(Claude R. Wickard, Secretary of Agriculture, et al. v. Filburn, No. 59, October Term, 1942.)*

This Court on October 26, 1942, finally disposed of an action brought against the Administrator of the Wage and Hour Law under the procedure of the Declaratory Judgment Law. *(Walling-Fleming, Administrator v. A. H. Belo Corporation, No. 622, October Term, 1941.)*

In addition to the use of this law and procedure to question the acts of officials of government, it is a procedure employed by the government itself. *(United States v. Golden Gate Bridge and Highway District of California,* 37 Fed. Supp. 595.)

To say that government may use this procedure to determine and "declare rights and other legal relations of any interested party petitioning for such declaration", *(Section 274D of the Judicial Code.)* and, to hold that its provisions may not be invoked to challenge for judicial determination the acts of government officials is, in our opinion, to make sport of a solemn act of Congress, and, to disregard the reasoned judgments of this Court.

It cannot be open to argument that this law was passed by Congress to improve and speed up the administration of justice for the citizen.

This law was appropriately implemented by the Rules of Civil Procedure:

"The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

(Rule 57, Rules of Civil Procedure, 1938.)

It is difficult to perceive a more appropriate remedy than declaratory procedure where it is desired to review the correctness of the act of a public official of government as to his application of a questioned principle of law to an admitted state of facts, or to the application of a correct principle of law misapplied to a given state of facts.

Declaratory procedure is cheap, expeditious, and simple. The United States Court of Appeals for the District of Columbia suggests that it is "clever." (R. p. 13.)

In transmitting to Congress his veto message of December 18, 1940, the President of the United States took occasion to say:

"Forward-looking judges, experienced administrators, and many progressive and public-spirited lawyers have recognized that American jurisprudence must advance along two lines:

"First, the cheapening, expediting, and simplfying of the judicial process itself. This cause has been greatly advanced through the adoption by the Supreme Court of simplified rules governing civil proceedings under an authorization made upon my recommendation." *(H. R. Doc. 986, 76th Cong. 3d Sess.)*

This was a veto message disapproving a measure which might further complicate rather than simplify the right of the citizen to challenge the legality of the acts of public officials and administrative agencies.

Accompanying this message of the President, there was the opinion of the then Attorney General, now Mr. Justice Jackson, who wrote:

"Under the Declaratory Judgment Act of 1934 any person may now obtain a judgment as to the validity of such administrative rules, if he can show such an

> interest and present injury therefrom as to constitute a 'case or controversy'."

It is obvious that the Attorney General in his review of the proposed law regarded the availability of the declaratory action as so apparent and logical when called into action concerning the acts of public officials as to call for no elaboration.

It is equally obvious that the validity of the mentioned opinion of the Attorney General is, of necessity, predicated upon the fact that for the citizen to challenge the act of an official of the government under declaratory procedure is in no wise to be defeated by the assertion that such citizen has brought an action against the United States.

If the declaratory action is available and appropriate as to the validity of administrative rules, as pointed out by the Attorney General, when the mere rules of a governmental agency invade the rights of the citizen, how very much more important is it that this simple, direct, expeditious, and "clever" process shall be at his call in matters affecting his right to have a declaration of his legal rights made by the courts under the law of the land rather than by an administrative official?

The lines of demarcation as between the judiciary and other agencies of government must be kept clear and distinct if our institutions are to be preserved and maintained in their pristine vigor.

In a recent address, Chief Justice Stone is quoted:

> "One of the most important concerns of any judiciary is its right relations with the public. No court can satisfy the public need for faith in the processes of justice, or can function with the highest efficiency without the support of public confidence." *(Journal of the American Judicature Society, October, 1942, p. 78.)*

It was from the sacrifices of patriots, and, from the determined skill and ability of lawyers devoted to the common good that there was developed our revered constitutional system, the preservation of which to its full is entrusted as a sacred heritage to the courts and the bar of the Nation.

Counsel accepts his part of such responsibility, and deems it his duty to present this petition for a rehearing in this cause. We might with appropriate respect quote the words of the aged lawyer Andrew Hamilton, who on the trial of Peter Zengler, regarded by historians as marking the dawn of civil rights in America more than 200 years ago:

> "I agree with Mr. Attorney that government is a sacred thing, but I differ very widely with him when he would insinuate that the just complaints of a number of men who suffer under a bad administration, is libelling that administration."
>
> *(American Bar Assn. Journal, June, 1942, p. 438.)*

I certify that this petition is presented in good faith and not for delay.

NATHAN BOONE WILLIAMS,
1010 Vermont Avenue,
Washington, D. C.,
Counsel for Petitioner.

October, 1942.